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ALEXANDER L. STEVAS,
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No. 84-1918

IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

IVEN L. FELT and WILMA FELT,
Petitioners,

v.

FIRST BANK OF SOUTH DAKOTA,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

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BRIEF FOR FIRST BANK OF SOUTH DAKOTA IN OPPOSITION

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First Bank of South Dakota

PRESS OF BYRON S. ADAMS, WASHINGTON, D.C. (202) 347-8203

BEST AVAILABLE COPY

QUESTION PRESENTED

Did the District Court err in dismissing Felts' Complaint for failure to state a claim upon which relief can be granted. F.R.C.P. 12.

As appears from the record no question of amendment or denial thereof ever arose.

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STATEMENT

I

Preliminarily the Court should be advised Petitioners' Complaint (NR 2, App. 10a) below fails to invoke jurisdiction in the Federal Courts, 15 U.S.C. 1640(e) requiring the action to be commenced within one year of the occurrence of the violation. The action

was filed in the District Court December 12, 1983 (NR 1, App. 6a). The Complaint identified as the subject of the action certain Exhibits which were attached to the Complaint. All of the Exhibits were dated more than one year prior to the commencement of the action. The Answer (NR 6, App. 6a) at Paragraph III asserted the Plaintiffs' claim was barred by the statute. That bar has not yet been presented because of the prior disposition of the action for failure to state a claim upon which relief could be granted.

II

Our research has found no cases which we believe would come within the considerations stated in Supreme Court Rule 17, nor do the cases cited by Petitioners appear to invoke such consideration.

OPINION BELOW

The opinion of the Court of Appeals denominated as here, No. 84-1293, was filed July 18, 1984, marked [not to be published]. A copy is attached (App. 1a). The Order and Judgment of the District Court (Case Number CIV. 83-5166), affirmed by the Court of Appeals, dismissing Plaintiffs' (Petitioners here) Complaint for failure to state a claim upon which relief could be granted was docketed February 2, 1984 (not published). A copy is attached (App. 3a).

The appeal briefing schedule of the Court of Appeals advised the Court would consider the appeal on the original file of the District Court in lieu of a designated record.

Accordingly, references in this Brief will be to the appropriate docket file number of the District Court record (United States District Court, District of South Dakota, Western Division. CIV. 83-5166. Iven L. Felt and Wilma Felt, Plaintiffs, vs. First Bank of South Dakota). A copy of the docket is attached. (App. 6a).

STATEMENT

Plaintiffs, Iven L. and Wilma Felt, are husband and wife, farmer-ranchers in Perkins County, South Dakota. In their operation they procured continuing financing from Defendant First Bank of South Dakota, by a long series of transactions commencing at least as far back as 1977, giving notes for the indebtedness and guarantees and security agreements securing the payment. The debts were not paid and First Bank commenced foreclosure action in the state court.

Felts then commenced this action in Federal District Court December 12, 1983, by filing a Complaint (NR 2, App. 10a). Service was made and Answer served and filed (NR 7, 6, App. 6a). A copy of the Complaint is attached (App. 10a).

The Complaint identified as the subject of the action, Exhibits A, App. 19a; B, App. 23a, B1, App. 25a, B2, App. 27a; C, App. 28a, C1, App. 34a, C2, App. 35a, C3, App. 36a, C4, App. 37a, C5, App. 42a; D, App. 48a, all of which were attached to the Complaint.

A and B2 is a Security Agreement covering farm machinery, equipment and livestock dated November 24, 1980.

B and B1 consists of a Security Agreement dated December 6, 1979, covering a pickup truck.

C is a promissory note, Felts to First Bank (the First National Bank in Lemmon, now First Bank) secured by farm machinery, livestock and feed, dated July 13, 1979.

C2 dated May 4, 1981 and C3 is a promissory note and payment schedule, Felts to First Bank, secured by cattle, feed and farm machinery.

C4 dated May 16, 1981 and C5 dated June 8, 1981 are two promissory notes and payment schedules, Felts to First Bank, secured by cattle, feed and farm machinery.

D is a copy of Summons in a civil action in state court by First Bank against Felts.

The Complaint (NR 2, App. 10a) alleges the Exhibits identified demonstrate violation of certain sections of U.S.C. Title 15. It further alleges that efforts to collect on the void unpaid notes by subjecting the security to foreclosure result in unspecified violations of Title 42, Ch. 21 (Civil Rights); Title 12, Section 2605, and the Fourth and Fourteenth Amendments to the Constitution of the United States. The Complaint further demands punitive damages, attorney fees and costs.

So far as material to disposition of the present appeal, the Answer (NR 6, App. 6a) asserted the Complaint fails to state a claim upon which relief can be granted.

January 24, 1984, First Bank, conforming to Local Rule 4, served (and filed January 25, 1984) its Response to Motion of Plaintiffs filed January 6, 1984, requesting, on the basis of the Response, that Felt's

Motion be dismissed on the merits, and further, on the basis of the Response, requesting its Motion contained in its Answer be renewed and considered and be granted on the demonstrated basis the Complaint failed to state a claim on which relief could be granted (NR 18, App. 6a).

After consideration, the District Court granted First Bank's motions and denied Felt's Motion of January 6, 1984, and dismissed the Complaint for failure to state a claim upon which relief could be granted (NR 20, App. 6a).

Felts moved to vacate the Order of Dismissal (NR 21, App. 6a) and filed Memorandum in Support thereof (NR 22, App. 6a). The Motion to Vacate was denied (NR 23, App. 6a). Felts then served and filed Notice of Appeal to the Court of Appeals (NR 24, App. 6a).

ARGUMENT

(A) 15 U.S.C. 1601 et seq. Not Applicable

From a reading of the Complaint and the Exhibits attached to the Complaint (NR 2, App. 10a), Felts' Motion of December 12, 1983 (NR 4, App. 6a) and Felts' Motion of January 6, 1984 (NR 8, App. 6a). and Felts' Points (NR 9, App. 6a). it incontrovertibly appears Felts borrowed money from Defendant and gave Promissory Notes with Guarantee and Security Agreements as security for the loans and subsequent advancements; that this money was for the purpose of financing Felts' agricultural enterprise; that all the security was agricultural in nature (feed, cattle, livestock, agricultural machinery); that Felts base their

claims to rescind the series of transactions and recover damages, actual and punitive, attorney fees and costs, on 15 U.S.C. 1601 and 1635.

Neither Section 1601 or 1635 provide a basis for the complaints made by Felts in their various pleadings or motions.

Felts' identify, as the credit instruments upon which this action is founded, Exhibits "A" (App. 19a) through "C-5" (App. 32a), attached to the Complaint. None of these instruments contain or refer to any security interest in real property of any kind, let alone any real property identified as that which Felts' use or expect to use as a residence.

If the main action then fails, as it does, there does not arise any duty of disclosure recited in the statute or duty of giving notice of right of rescission, any right of cancellation of finance charges, interest charges, or security interest, any right to penalties or attorney fees and costs.

No additional facts are stated in the Complaint which would afford Felts any other or alternative relief.

CONCLUSION

The Motions were properly denied and the Complaint was properly dismissed.

Respectfully submitted this 1st day of July, 1984.

HORACE R. JACKSON
GENE N. LEBRUN
LYNN, JACKSON, SHULTZ & LEBRUN, P.C.
P. O. Box 8110
Rapid City, SD 57709
(605) 342-2592

Counsel for Respondent
First Bank of South Dakota

CERTIFICATE OF SERVICE

I hereby certify that on the ____ day of July, 1985, I sent to:

Iven L. Felt
Wilma Felt
Rt. 2, Box 787
Hettinger, ND 58639

by first class mail, postage prepaid, two true and correct copies of Brief for First Bank of South Dakota in Opposition relative to the above-entitled matter.

/s/ HORACE R. JACKSON
Horace R. Jackson

APPENDIX

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Exhibit C 28a

Exhibit D 48a

APPENDIX

UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

No. 84-1293

IVEN L. FELT AND WILMA FELT,
Appellants,

v.

FIRST BANK OF SOUTH DAKOTA,
Appellee.

Appeal from the United States District Court
for the District of South Dakota

Submitted: June 19, 1984
Filed: July 18, 1984

OPINION

Before Ross, MCMILLIAN and FAGG, Circuit Judges.

PER CURIAM.

Iven L. Felt and Wilma Felt appeal from a final judgment entered in the District Court[1] for the District of South Dakota dismissing their complaint for failure to state a claim upon which relief can be granted. For reversal appellants argue the district court improperly granted the motion to dismiss. For the reasons discussed below, we affirm.

Appellants, North Dakota farmers, signed notes for more than $134,000 and granted to the First Bank of South Dakota security interests in livestock, feed and farm equipment to secure payment. When appellants

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[1] The Honorable Andrew W. Bogue, Chief Judge, United States District Court for the District of South Dakota.

failed to make timely payments, the bank commenced foreclosure proceedings in the state court. In their pro se complaint filed in federal district court, appellants alleged that the security agreements were signed by only Iven L. Felt, were unnotarized, contained no rights of rescission, and no disclosure statements in violation of 15 U.S.C. § 1601, 1604, 1605, 1635, 1640, and 1691(d). They filed a motion to compel rescission of the security agreements under 15 U.S.C. § 1635.

Defendants in their answer alleged as affirmative defenses that the complaint failed to state a claim upon which relief could be granted and the claim was barred by the applicable statute of limitations and the doctrine of res judicata. The district court dismissed the complaint for failure to state a claim. This appeal followed.

We affirm. The allegations of the complaint center on noncompliance with 15 U.S.C. § 1635, which provides a right of rescission as to consumer credit transactions in which a security interest is acquired or retained in real property used as the residence of the person to whom credit is extended. The security interests involved in this case were in livestock, feed and equipment, not real estate. Therefore, 15 U.S.C. § 1635 is inapplicable, and the district court properly dismissed the complaint for failure to state a claim.

Accordingly, the judgment of the district court is affirmed.

A true copy.

ATTEST:

Clerk, U.S. Court of Appeals, Eighth Circuit.

[Not to be published.]

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
WESTERN DIVISION

Civ. 83-5166

IVEN L. FELT AND WILMA FELT,
Plaintiffs,

vs.

FIRST BANK OF SOUTH DAKOTA,
(NATIONAL ASSOCIATION)
Defendant.

ORDER

Filed February 2, 1984
William F. Clayton, Clerk
krb

Defendant having filed a Motion to Dismiss with this Court on January 25, 1984 upon the grounds that Plaintiffs' Complaint failed to state a claim upon which relief may be granted, and this Court having examined all the records and files in this action, and it appearing that Defendant's motion should be granted for the reason that Plaintiffs' Complaint does not state a claim upon which relief may be granted, it is hereby

ORDERED that Defendant's Motion to Dismiss is hereby granted and Plaintiffs' Complaint is hereby dismissed.

Dated this 2nd day of February, 1984.

BY THE COURT:
ANDREW W. BOGUE
Chief Judge

ATTEST:

WILLIAM F. CLAYTON, Clerk

By KAREN R. BEHRENS, Deputy

Take notice that the original of the copy was filed and entered in the office of the Clerk of the United States District Court for the District of South Dakota on the 2nd day of February, 1984.

/s/ WILLIAM F. CLAYTON
Clerk

DOCKET COVER SHEET

Dist.: 869 Off.: 5 Docket: Yr. 83 Number 5166

Filing Date: Mo 12 Day 12 Year 3 J: 3 N/S: 371

O: 1 $ Demand: Nearest $1,000 999

Judge/Mag. No.: J 6905 County: 46105

Docket: Yr. 83 Number 5166

PLAINTIFFS

FELT, Ivan L.; and FELT, Wilma

DEFENDANTS

FIRST Bank of South Dakota (National Association)

CAUSE

(Cite the U.S. Civil Statute under which the case is filed and write a brief statement of cause)

Chapter 15. This is an equity suit on violating of Federal statutes.

ATTORNEYS

Ivan L. & Wilma Felt, Pro Se.
Rt. 2, Box 23
Hettinger, ND 58639
605-855-2340

Gene Lebrun
P. O. Box 8110
Rapid City, SD 57701
605-342-2592

FILING FEES PAID

Receipt Number: 12

DOCKET LISTING FILE NUMBERS

PROCEEDINGS

CIV83-5166

Ivan & Wilma Felt vs. First Bank of South Dakota, etc.

Date	*NR.*	
1983		
Dec. 12	1	CIVIL Cover Sheet w/Demand for Jury Trial
Dec. 12	2	COMPLAINT w/o Demand for Jury Trial
Dec. 12		Issuing SUMMONS fur. 2 conformed copies to Ivan Felt for service
Dec. 12	3	NOTICE of Receision Against the Liens & Mortgages Subject of the Instant Law Suit
Dec. 12	4	MOTION of Plff. to Compel Recision of all Liens and Mortgages Subject of the Instant Law Suit
Dec. 15	5	ORDER Denying Plffs. Motions to Recind all Liens & Mortgages & for Summary Judgment
Dec. 15		Notice of entry & copy of Order mailed Ivan & Wilma Felt
Dec. 15		Correct copy entered 1983 WDOB page 221
Dec. 22	6	ANSWER
Dec. 27	7	SUMMONS Ret. & Filed

1984

Jan. 6	8	PLFFS. MOTION TO COMPEL Recision of All Liens and Mortgages Subject Of the Instant Law Suit
Jan. 6	9	POINTS IN SUPPORT Of Plffs. Motion To Compel
Jan. 6	10	PLFFS. RESPONSE To Dfdts. Motion To Dismiss
Jan. 12	11	ORDER that Dfdt. respond to Plffs' motion by 1-30-84, denying Dfdt's. motion to dismiss w/out prejudice, denying Plffs'. motion to strike
Jan. 12		Notice of Entry & copy of Order mailed Ivan & Wilma Felt & Gene Lebrun
Jan. 24	12	MOTION of Plffs to Remove w/ORDER attached UNSIGNED
Jan. 24	13	AFFIDAVIT of Amount Owing
Jan. 24	14	PRAECIPE Requesting Clerk to Enter Clerk's Entry of Default
Jan. 24	15	AFFIDAVIT of Service
Jan. 25	16	DEFAULT Judgment *UNSIGNED*
Jan. 25	17	ORDER that Default Judgment Shall not be Entered; Denying Plff. Motion to Remove
Jan. 25		Notice of entry & copy of Order mailed Gene Lebrun, Ivan & Wilma Felt

Jan. 25	18	RESPONSE to Plffs. Motion of January 6, 1984
Feb. 2	19	RULE 16(b) Scheduling Request
Feb. 2		Mailing Copies to Ivan & Wilma Felt and Gene Lebrun
Feb. 2	20	ORDER granting Dfdt.'s Motion To Dismiss and dismissing Plffs.' Complaint
Feb. 2		Notice of Entry and copy mailed Ivan & Wilma Felt and Gene Lebrun
Feb. 13	21	MOTION TO VACATE ORDER Or In The Alternative Leave to Refile Compl. as Amended by Plffs.
Feb. 13	22	MEMORANDUM In Support of Plffs' Motion To Vacate Order of Dismissal or In The Alternative Leave To Refile Complaint as Amended
Feb. 21	23	ORDER denying Plffs'. alternative motions
Feb. 21		Notice of Entry & copy of Order mailed Gene Lebrun, Ivan & Wilma Felt
Mar. 1	24	NOTICE OF APPEAL
Mar. 1		C. copy of Notice of Appeal mailed to Ivan & Wilma Felt and Gene Lebrun

Mar. 1	Mailing Record on Appeal to Robert D. St. Vrain, Clerk, U.S. Court of Appeals for the Eighth Circuit, St. Louis, MO, 63101
Mar. 1	Mailing copy of Record on Appeal to Robert D. St. Vrain, Clerk, U.S. Court of Appeals for the Eighth Circuit, St. Louis, MO 63101

COMPLAINT WITH EXHIBITS

IN THE DISTRICT COURT FOR THE
STATE OF SOUTH DAKOTA
RAPID CITY, SOUTH DAKOTA

Case No.

IVEN L. FELT AND WILMA FELT,
Plaintiffs, Pro Se

VS.

FIRST BANK OF SOUTH DAKOTA
(NATIONAL ASSOCIATION)
Defendants.

COMPLAINT

JURISDICTION: 4th Amendment of United States Constitution
14th Amendment of United States Constitution
Chapter 15 (USC), Sect. 1601, 1602(s), 1602(t), 1607, 1635, 1637, 1638, 1639, 1640
Title 28 (USC), Sect. 1331
Title 42 (USC) Chapter 21;
Title 18 (USC) Sect. 152;
Bill of Rights, State of South Dakota Constitution

COMES NOW the Plaintiffs complaining and alleging as follows:

1. Plaintiffs notices the Court Exhibit "A" attached hereto some kind of a Secutity Agreement Dated 24th day of November 1980 that contains no

signature of spouse, unnotarized, no rights of recision, no disclosure statements which is a violation of Title 15 (USC) Sect. 1601, 1604, 1605, 1635, 1640, 1691(d), which makes said instrument void and illegal.

2. Plaintiffs notices the Court that Exhibit "A" has no corresponding note dated the same date which proves that this particular instrument could never have been part of a Truth in Lending transaction and makes any other assumption on the part of the Defendants herein null and void.

3. Plaintiffs notices the Court to Exhibit "B" thru "B2" some kind of a Security Agreement dated 12-6-79 that contains no signature as checked of Plaintiffs spouse, no signature of the lenders, not notarized, no right of recision, no disclosure statements, no corresponding notes which is a violation of Title 15 (USC) sections 1601, 1604, 1605, 1635, 1640, 1691(d) which makes said instrument void and illegal.

4. Plaintiffs notices the Court to Exhibit "C" thru "C5" what are called notes that are not notarized and on Exhibit "C4" do not contain spouses signature of the Plaintiff, no rights of recision, no disclosure required by Federal Truth in Lending, no corresponding Security Agreements, Deeds or Notes which proves the Defendants herein have violated Title 15 (USC) Federal Truth in Lending Act making all instruments void and unlawful.

5. Plaintiffs notices the Court to Exhibit "D" attached herewith a copy of the cover sheet of an action taken in the South Dakota Circiut Courts where the Exhibits attached hereto were used knowing they violated Federal Truth in Lending which is a violation of Title 18 (USC) Sect. 152 fraudulent papers to

collect a claim is both a criminal penalty of fine or imprisonment which Defendants herein have perpertrated upon the Plaintiffs herein.

6. Plaintiffs notices the Court the use of Judicial Courts a fraudulent attempt violates Title 15 (USC) Sections 1692 e, 1692 f, 1692 g, 1692 h, 1692 j, 1963 l, 1693 n, 1716 wherein Defendants have violated Plaintiffs creating damages of unmeasurable structure.

7. Plaintiffs notices the Court to Title 15 (USC) Section 1607 wherein Defendant Bank must comply with Federal Truth in Lending and to Title 15 (USC) Section 1719 where Jurisdiction of this Court carries.

8. Plaintiffs notices the Court to Title 42 (USC) Chapter 21, Civil Rights Act, that an attempt to incriminate causing Plaintiffs to be threatened of Life, Liberty or Property is a violation of Plaintiffs Civil Rights, perperates a fraud and has been condoned by the Defendants herein.

9. Plaintiffs notices the Court to Due Process and Equal Protection of the laws in which Defendants herein have ignored in an attempt to seize property through unlawful techniques, while using Judicial system in contempt and has violated the Fourth and Fourteenth Amendments of the United States Constitution, Bill of Rights, South Dakota State Constitution.

10. Plaintiffs notices the Court of Title 12 (USC) Section 2605 Real Estate Settlement Procedures Act which is a part of Section 1631, sub Section (c) which has been violated by the Defendants herein making entire transactions null and void between the parties herein.

WHEREFORE, Plaintiffs pray for Summary Judgment for actual damages the sum of $5,000,000.00 (Five Million and no/100) dollars.

COUNT 2

1. COMES NOW the Plaintiffs, suffering extreme mental cruelty and duress through no fault of their own, but by the actions of the wanton harassment of an ill mannered and unmoral Defendants and has had to undergo such to such an extent that was uncalled for but delivered as a fallacious punishment by intent with a heartless uneducated callousness that harbors barbarious Pontiu Pilate punishment beyond societies legal or moral intentions, no matter what might be considered as acceptable.

2. Plaintiffs have had to partake and accept humiliation beyond their wildest imagination through no fault of their own, which is like a "flea on a gnat's behind," which, when attempting to explain is one thing but to attempt to find is something else and carries to its bed a directness of shivering intent unexplainable and never payable in a monetary value, since the itching brought about can only be told by the actions of a dog and cat, but Plaintiffs are Human Beings.

3. Plaintiffs have been forced to extreme mental and physical duress by the constant uncalled for pressures of unauthorized conduct on the part of the Defendants, causing health problems of extreme stress and strain, not through the fault of the Defendants, but rather through the applied coersive intent of tumultuous barriers that have been unnecessarily placed as a burden on the back of America's most

dynamic, historically moral, courageous and thrifty part of society, herein Plaintiffs, chronicle and blazant members of the greatest industry in this nation, American Agriculture.

4. Plaintiffss' tears and inflicted pain caused by the nefarious conduct of a Defendants long unchained of default in conduct has required the courage to stand affront Satan's breath of Hell, not by Plaintiffs' choosing, but rather by Defendants hellish antics of uncurbed conduct, which has run far too long rampant in its area and long ago should have been chained as the "Mad Dog, Pluto" in the comic strips.

WHEREFORE, Plaintiffs prays for Summary Judgement for Punitive Damages for the extremity of the inhuman suffering heretofore described in the amount of $5,000,000.00 (Five Million dollars) against Defendants and their heirs.

COUNT 3

Plaintiffs have shown sufficient severity of damages brought about by the Defendants herein named to reasonably ask for Summary Judgment for Attorney's Fees, Court Costs and any and all other legal fees this litigation might incur, payable forthwith on final stipulations, agreements, or settlements which may be reached herein.

Dated this 10th day of December, 1983.

/s/ IVEN L. FELT
Iven L. Felt, Plaintiff Pro Se
Rt. 2 Box 23
Hettinger, North Dakota 58639

/s/ WILMA FELT
Wilma Felt, Plaintiff Pro Se
Rt. 2 Box 23
Hettinger, North Dakota 58639

STATE OF COLORADO
COUNTY OF WELD ss.

Subscribed and sworn to before me this 10 day of Dec., 1983.

My Commission expires June 3, 1986

Witness my hand and official seal:

[SEAL]

/s/ JOYCE A. UNGRY
Notary Public

CERTIFICATE OF MAILING

I hereby certify that I mailed a copy of the above "Complaint and Pro Se" this 12th day of December, 1983, postage prepaid, The Atorney General of the United States, Tenth and Constitution Ave., Washington, DC 20530 and The U. S. District Attorney for the State of Dakota, Philip N. Hogen, 135 Federal Building and United States Courthouse, 400 South Phillips Ave., P O Box 1073, Sioux Falls, South Dakota 57102.

/s/ IVEN L. FELT
Iven L. Felt, Plaintiff Pro Se
Rt. 2 Box 23
Hettinger, North Dakota 58639

/s/ WILMA FELT
Wilma Felt, Plaintiff Pro Se
Rt. 2 Box 23
Hettinger, North Dakota 58639

NOTICE OF SERVICE

We, Iven L. Felt and Wilma Felt, hereby certify that we have had served a true and correct copy of the "Complaint" with "Summons" and "Pro Se" by Sheriff Kolb to: First Bank of South Dakota (National Association), Lemmon, South Dakota 57638.

Dated this 12 day of December, 1983.

/s/ IVEN L. FELT
Iven L. Felt, Plaintiff Pro Se
Rt. 2 Box 23
Hettinger, North Dakota 58639

/s/ WILMA FELT
Wilma Felt, Plaintiff Pro Se
Rt. 2 Box 23
Hettinger, North Dakota 58639

IN THE DISTRICT COURT FOR THE
STATE OF SOUTH DAKOTA
RAPID CITY, SOUTH DAKOTA

Case No.

—

IVEN L. FELT AND WILMA FELT
Plaintiffs, Pro Se

VS.

FIRST BANK OF SOUTH DAKOTA
(NATIONAL ASSOCIATION)
Defendants.

NOTICE OF PRO SE

COMES NOW, Iven L. Felt and Wilma Felt, Notices the Honorable Court of Pro Se in the above numbered case.

Dated this 10th day of December, 1983

/s/ IVEN L. FELT
Iven L. Felt, Plaintiff Pro Se
Rt. 2 Box 23
Hettinger, North Dakota 58639

/s/ WILMA FELT
Wilma Felt, Plaintiff Pro Se
Rt. 2 Box 23
Hettinger, North Dakota 58639

STATE OF COLORADO
COUNTY OF WELD ss.

Subscribed and sworn to before me this 10 day of Dec., 1983.

My Commission expires June 3, 1986

Witness my hand and official seal:

[SEAL] /s/ JOYCE A. UNGRY
Notary Public

Exhibit "A"

SECURITY AGREEMENT

Farm Products and Equipment

The undersigned (hereinafter called "Borrower") hereby grants to First National Bank in Lemmon, Lemmon, South Dakota (hereinafter called "Bank") a Security Interest in the following described property (hereinafter called "Collateral"):

(a) [Describe equipment]

All farm machinery and equipment, including but not limited to that listed on Schedule "A" attached hereto.

together with all tools, parts, accessories, repairs, improvements and accessions thereto and substitutions and replacements therefor now existing or at any time hereafter made or acquired and all other Equipment (as that term is defined in the Uniform Commercial Code) now owned or hereafter at any time acquired by Borrower or in which Borrower obtains rights;

(b) [Describe livestock, poultry, etc.]

All cattle, sheep and swine, incluidng but not limited to the following:

98 Cows & Heifers
2 Bulls
70 Calves

together with the young and produce thereof and all other livestock and poultry now owned or hereafter at any time acquired by Borrower or in

which Borrower obtains rights; all of which are or will be located at NW¼, 11-21-10, Perkins County, SD

on premises owned by: borrower

together with all other crops grown or growing or planted within one (1) year from the date hereof on the premises described as follows:

which premises are owned by:

(d) All feed, seed, fertilizer and other supplies now owned or hereafter at any time acquired by Borrower for use in connection with its farming operations;

(e) All property of every kind and description in which the Borrower has or may acquire any interest now or hereafter at any time in the possession or control of the Bank for any reason including, without limitation, property delivered to the Bank as collateral, for safekeeping, or for collection or exchange for other property, and all dividends and distributions on or other rights in connection with such property; and

(f) All Proceeds and Products of all the foregoing,

to secure payment to the Bank at its banking house at the address stated above of all notes of Borrower concurrently herewith, heretofore or hereafter delivered to or purchased or otherwise acquired by the Bank, and all other liabilities and indebtedness of Borrower to Bank, due or to become due, direct or indirect, absolute or contingent, joint or several, howsoever created, arising or evidenced, now existing or

hereafter at any time created, arising or incurred (hereinafter called "Secured Obligations").

Borrower warrants, represents and agrees that:

1. The Collateral is or will be used, produced or consumed primarily in connection with Borrower's farming operations.

2. The Collateral ☐ will ☐ will not be acquired with the proceeds of the loan or advance made on or about the date hereof. If the Collateral will be so acquired, the Bank is authorized to disburse such proceeds directly to the seller or sellers of the Collateral.

3. The Collateral is or will be located at the location or locations herein set forth and will not be removed from such location or locations unless, prior to any such removal, Borrower has given written notice to the Bank of the location or locations to which Borrower desires to remove the Collateral and the Bank has given its written consent to such removal.

4. Borrower has or will acquire title to and will at all times keep the Collateral free of all liens and encumbrances, except the Security Interest created hereby, and has full power and authority to execute this Security Agreement, to perform Borrower's obligations hereunder, and to subject the Collateral to the Security Interest created hereby. No financing statement covering all or any part of the Collateral, except any which may have been filed by the Bank, is on file in any public office.

5. Borrower will at any time or times hereafter execute such financing statements and other instru-

ments and perform such acts as the Bank may request to establish and maintain a valid Security Interest in the Collateral, and will pay all costs of filing and recording.

6. Borrower will keep the Collateral in good condition and insured against such risks and in such amounts as the Bank may request, and with an insurance company or companies satisfactory to the Bank, the policies to protect the Bank as its interest may appear and to be delivered to the Bank at its request.

7. Upon default by Borrower in any of the preceding agreements, the Bank at its option may (i) effect such insurance and repairs and pay the premiums therefor and the costs thereof, and (ii) pay and discharge any taxes, liens and encumbrances on the Collateral. All sums so advanced or paid by the Bank shall be payable by Borrower on demand with interest at the maximum rate allowed by law and shall be a part of the Secured Obligations.

8. Borrower will not sell, transfer, lease, or otherwise dispose of the Collateral, or attempt or offer to do any of the foregoing, without the prior written consent of the Bank, and unless the Proceeds of any such sale, transfer, lease, or other disposition are paid directly to the Bank. No provision contained in the Agreement shall be construed to authorize any such sale, transfer, lease or other disposition of the Collateral except on the conditions contained in this paragraph.

Exhibit "B"

SECURITY AGREEMENT

Consumer Goods

The undersigned (referred to as "Borrower") grants to First National Bank in Lemmon Lemmon, South Dakota (referred to as "Bank") a security interest in the following property (referred to as "Collateral"):

1—1978 GMC ¾ ton 4 x 4 Pickup,
Serial #TKL248J15233

together with all parts, accessories, repairs, improvements and accessions at any time made or acquired;

to secure payment to the Bank at its banking house at the address stated above of one note of the Borrower for $25,000.00, dated 12-6, 1979, due 6-15-80 after date and all other notes given in renewal of it (referred to as "Secured Obligation").

Borrower warrants and agrees that:

1. The Collateral is or will be used by Borrower primarily for personal, family or household purposes.

2. The Collateral ☐ will ☒ will not be acquired by Borrower with the proceeds of the Secured Obligation. If the Collateral will be so acquired, the Bank is authorized to disburse such proceeds directly to the seller of the Collateral.

3. The Collateral is or will be located at Borrower's address shown below and will not be permanently removed from that address unless Borrower has pre-

viously given written notice to the Bank of the location to which he desires to remove the Collateral and the Bank has given its written consent.

4. Borrower has or will acquire title to and will keep the Collateral free of liens and encumbrances, except this Security Interest and has the power and authority: to execute this Security Agreement; to perform Borrower's obligations hereunder; and to subject the Collateral to this Security Interest. No financing statement or other evidence of lien covering all or any part of the Collateral, except any which may have been filed by the Bank, is on file in any public office.

5. Borrower will at any time execute financing statements and other instruments and perform such acts as the Bank may request to establish its security interest in the Collateral, and will pay all costs of filing and recording.

6. Borrower will keep the Collateral in good condition and insured (in amounts and with coverage as requested by the Bank) with an insurance company or companies satisfactory to the Bank. The insurance policies shall protect and state the Bank's interest, and shall be delivered to the Bank at its request.

7. Upon default by Borrower in any of these provisions, the Bank may (i) effect such insurance and repairs and pay the premiums and related costs and (ii) pay and discharge any taxes, liens and encumbrances on the Collateral. All sums so advanced by the Bank shall be payable by Borrower on demand with interest at the maximum rate allowed by law.

8. Borrower will not sell, lease, or otherwise dispose or attempt to dispose of the Collateral, without the prior written consent of the Bank, and unless the Proceeds of any such sale, lease, or other disposition are paid to the Bank.

9. Any of the following will constitute an event of default: (a) failure of any Borrower, or indorser, to pay when due any amount payable under the Secured Obligation; (b) failure to perform any agreement of Borrower; (c) any statement, or warranty of Borrower made or furnished to the Bank which is untrue in any respect; (d) any change in the affairs of a Borrower or indorser of the Secured Obligation which the Bank believes impairs its security or increases its risk.

10. Whenever a default exists, the Bank may, without demand or notice, declare all or any part of the Secured Obligation immediately payable, and may exercise all rights and remedies of a secured party under the Uniform Commercial Code, any applicable law, or this Security Agreement.

11. Borrower agrees, in the event of default, to make the Collateral available to the Bank at any place acceptable to Bank, and to pay all costs, including reasonable attorneys' fees, in the collection of the Secured Obligation and the enforcement of any of the Bank's rights. If any notification of disposition of any of the Collateral is required by law, such notification is reasonable and proper if mailed at least ten (10) days before such disposition with postage prepaid and addressed to the Borrower at the address shown below.

12. No delay or failure by the Bank in the exercise of any right or remedy constitutes a waiver and no exercise by the Bank of any right or remedy will preclude the exercise of any other right or remedy.

13. If more than one party signs this Agreement, the term "Borrower" shall refer to all parties, and all such parties will be jointly obligated.

Executed and delivered at Lemmon, South Dakota this 6th day of December, 1979.

Address	*Borrower*
Hettinger, ND	/s/ IVEN FELT
Hettinger, ND	

SCHEDULE A

To Security Agreement Dated 11-24-80

1—1953 Oliver 88 Tractor
1—1956 International 300 Tractor
1—1960 Lindsey Harrow
1—1962 International Cultivator
1—1957 John Deere 12′ Surflex
1—1960 John Deere Rod Weeder
1—1965 International 9′ Mower
1—1967 Mayrath 32′ Grain Elevator
1—1971 Bear Cat Grinder-Mixer, Model 1250
1—1972 John Deere 16′ Tool Bar
1—1966 John Deere 95 SP Combine
2—1974 John Deere 8′ Grain Drills
1—Foster Chaff Wagon
1—1972 John Deere Tandem Disk
1—1976 Vermeer Round Baler
1—Lahman Stackmover
1—1956 IHC 300 Utility Tractor
1—1978 Massey Ferguson 5 Wheel Rake
1—1969 John Deere 4020 Tractor
1—1978 Versatile 18′ SP Swather
1—1974 Farmhand Feeder Wagon
1—1973 Deutz 4WD Diesel Tractor, Sr. #5861389

November 24, 1980

Borrower

/s/ IVEN FELT

Exhibit C

$15,300.00
INST'S DUE Dec 1st
No. 110003

Name(s) Iven Felt Farm & Ranch
Installment Note Lemmon, South Dakota

July 13, 1979

For value received, the undersigned jointly and severally promise to pay to the order of

FIRST NATIONAL BANK IN LEMMON

at its office at

Lemmon, South Dakota

Fifteen Thousand Three Hundred and no/100 - - - - - - - ($15,000.00) with interest thereon from date hereof at the rate of 11 percent per annum as indicated in No. 2 below, in 4 installments as follows: $3,825.00 on December 1, 1979, and on the 1st day of December, 1980, and a like and equal sum on the same day of each year thereafter until December 1, 1982, when the remaining balance of $3,825.00 shall be due and payable. If any payment is more than twice the regular payment it is a BALLOON PAYMENT which the bank does not undertake to refinance if not paid when due.

1. Each installment includes interest and shall be applied first upon accrued interest and the balance upon principal.
2. Interest on all unpaid principal shall be paid in addition to and at the maturity of each installment. The amount of interest to be added to the first scheduled installment is $820.15 and to the last scheduled installment is $420.75.

3. Interest has been paid to the maturity of each installment.

4. Interest on the principal balances from time to time outstanding shall be paid at the maturity of the final installment.

The holder of this note may at its option without notice declare this note immediately due and payable for the entire unpaid principal hereof plus accrued interest hereon upon or at any time after the occurrence of any of the following events: any default in the payment of this note; and default under the terms or conditions of any security agreement or other note, obligation, instrument, undertaking or agreement concurrently herewith or heretofore or hereafter given to or acquired and held by the holder hereof to which any maker, co-maker, indorser, surety or guarantor hereof is a party; if the holder hereof deems itself insecure; or if there is such a change in the condition of affairs, financial or otherwise, of any maker, co-maker, indorser, surety or guarantor as in the opinion of the holder hereof increases the risk.

Each maker, co-maker, indorser, surety and guarantor hereof jointly and severally agrees to pay this note and guarantees payment hereof and waives demand, presentment, protest and notice of dishonor, and consents to any extensions and renewals hereof without notice, and consents to the release by the holder hereof with or without consideration of any of them and exonerates the holder hereof from all duty and obligation to make demand on anyone for payment of any ... ... — ... ... — ... ... — ... ... — ... ... — ... — ... ... anyone of nonpayment thereof or to collect or sell the same and consents to

the extension, renewal, exchange, surrender or release by the holder hereof with or without any consideration of such collateral, and agrees that when or at any time after this note becomes due the holder hereof may without notice offset or charge this note against

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1. Proceeds of Note			$15,300.00
2. Other Charges consisting of:			
Official Fees for lien search, perfection and release ...	$	3.00	
Premium for property insurance	$	—	
Premium for credit life insurance	$	—	
Premium for credit life and disability insurance	$	—	
Total Other Charges	$	3.00	
Less: Cash Paid, if any ...	$	3.00	
Total Other Charges Financed			$ —0—
3. Amount Financed (1 plus 2)			$15,300.00
4. FINANCE CHARGE, consisting of:			
Prepaid Finance Charge ..	$	—	
Other (specify) interest ...		$3,174.65	
Total FINANCE CHARGE			$ 3,174.65
5. Total of Payments (3 plus 4)			$18,474.65
6. ANNUAL PERCENTAGE RATE ...			11 %
7. With Long Term Insurance:			
(a) Total of payments	$	= Exhibit F	
(b) Total monthly payment	$		

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any bank account or other account then maintained by any of them with the holder hereof or then existing between any of them and the holder hereof and to pay any deficiency, and agrees in case of any default to pay all costs of collection, including reasonable attorneys' fees, and interest on the principal portion of each delinquent installment at the per annum rate specified above.

Upon prepayment of this note in full, a refund of any unearned finance charge will be made computed on an actuarial basis. Any unearned insurance premium paid in connection with this transaction will be rebated, upon application, by the agent writing the insurance on the basis of the rate of 78's.

SECURITY. In addition to the right of offset as explained above, this note and any extensions or renewals of it are ☐ unsecured ☒ secured by a security agreement or other evidence of security interest covering the following described property (the "Collateral")

1978 Deutz model 130-06 4 wheel drive tractor, serial #5861389., adv. livestock, feed, machinery

together with all parts, accessories, improvements and accessions thereto and substitutions and replacements therefor, by all property of the same type or kind as hereafter comes in to the possession or control of the bank, by all proceeds and products of the Collateral, and by an assignment of all fire, theft, collision and other insurance required by the bank.

INSURANCE

PROPERTY INSURANCE which is required by the security agreement covering the Collateral may be

obtained by the Borrower through any person of his choice. Such insurance is available through the bank at a cost of $———— for a ——— year term.

CREDIT LIFE AND DISABILITY INSURANCE. Neither credit life nor disability insurance is required in connection with this transaction. However, this insurance may be obtained through the seller for the term of this contract at the cost indicated below, provided that each insured as of the date hereof is able to perform usual activities or occupation and otherwise qualifies for such insurance.

☐ Joint Spouse Credit Life Insurance .. $———
☐ Single Life Credit Life Insurance .... $———
☐ Credit Disability Insurance ..... $———

We desire joint spouse credit life insurance. WE ARE BOTH UNDER 66 YEARS OF AGE AND ARE CO-SIGNERS OF THIS NOTE.

Date ——— ———————— Age ———
Signature of 1st Signer of Note

Date ——— ———————— Age ———
Signature of 1st Signer's Spouse

I desire credit ☐ life and ☐ disability insurance. I AM UNDER 66 YEARS OF AGE.

Date ———————— Age ———
Signature of 1st Signer of Note

THIS IS NOT A COMMITMENT TO PROVIDE INSURANCE.

Bank is authorized to charge my checking account for the monthly installments ☐ (Check box if desired).

Undersigned borrower acknowledges receipt of a copy of this note on the date hereof.

Address Hettinger, North Dakota

Signature ✔ /s/ IVEN FELT

Address Hettinger, North Dakota

Signature ✔ /s/ WILMA FELT

BANK COPY

Exhibit D

STATE OF SOUTH DAKOTA
COUNTY OF PERKINS, ss.

IN CIRCUIT COURT
EIGHTH JUDICIAL CIRCUIT

FIRST NATIONAL BANK IN LEMMON,
Lemmon, South Dakota, a
banking corporation,
Plaintiff,

- VS -

IVAN FELT and
WILMA FELT,
Defendants.

SUMMONS

THE STATE OF SOUTH DAKOTA TO THE ABOVE NAMED DEFENDANTS, GREETINGS:

You are hereby summoned and required to answer the Complaint of the Plaintiff in the above entitled action, a copy of which is herewith served upon you, and to serve a copy of your Answer to the said Complaint on the subscriber at his office, the post office address of which is Professional Building, Mobridge, South Dakota, within thirty (30) days after the service of this Summons upon you, exclusive of the day of such service; and in case of your failure to answer the said Complaint within that time, Judgment by Default may be rendered against you as requested in the Complaint

Dated at Mobridge, South Dakota, this 1st day of July, 1982.

/s/ NEWELL E. KRAUSE
Newell E. Krause of Krause & Seiler
Attorney for Plaintiff
P.O. Box 397, Professional Building
Mobridge, South Dakota 57601-0397

[handwritten, illegible] by Sheriff Kolb—July 6, 1982